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August 30, 2002

BY HAND

Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
Commonwealth of Massachusetts
One South Station, 2nd Floor
Boston, Massachusetts 02110

**RE: D.T.E. 97-116/99-39 Supplemental Opposition
To Motion To Re-Open Dockets**

Dear Ms. Cottrell:

In light of the ruling from the federal district court in the appeals in this docket,¹ the Department should immediately terminate any consideration of Verizon's motion to reopen Docket Nos. 97-116 and 99-39. The federal court, affirming the Magistrate Judge's recommendation, has ruled that the Department's original decision in these matters, in October 1998, conforms with federal law. The federal court also has ruled that the Department's subsequent orders — including, specifically, its order from May 1999 relieving Verizon of the obligation to pay for ISP-bound calls under the terms of the parties' then-effective interconnection agreements — violate federal law.

The Department is now under an obligation from the federal court to proceed in a manner “not inconsistent with” the court's ruling. Any effort to rehabilitate a series of orders that have now been adjudged to rest on a fundamental misunderstanding of federal law would put the Department on a collision course with the plain ruling of the federal court.

Global NAPs notes that the court's ruling implicitly affirms one of Global NAPs' key points in its earlier opposition to Verizon's motion. As Global NAPs explained, the Department's role in this matter is to enforce the parties' contract, not to implement the Department's policy preferences with regard to compensation for ISP-bound calls. *See*

¹ *Global NAPs, Inc. v. Department of Telecommunications and Energy*, Consolidated Civil Actions Nos. 00-10407-RCL, 00-11513-RCL, *Memorandum and Order on Magistrate Judge's Report and Recommendation on Defendants' Motion for Summary Judgment* (Aug. 27, 2002). A copy of this ruling is attached hereto as Exhibit A.

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Opposition Of Global Naps, Inc. To Verizon Massachusetts Motion To Re-Open Dockets, Section 4 (filed Aug. 1, 2002). Just as the FCC has been able to require contractual compensation for ISP-bound calls when the contract in question did not expressly adopt the jurisdictional “end-to-end” test to govern such compensation, the Department properly did so in its October 1998 order. It is now under a legal obligation to give force to the parties contractual bargain.

Since the federal court has ruled October 1998 Order validly interprets that bargain, there is no basis in federal law or the Department’s standards for reconsideration to re-open this docket.

Sincerely,

Cameron F. Kerry

CFK/lf